Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-63

JAMES E. HOLSHOUSER, Governor of the State of North Carolina; RUFUS L. EDMISTEN, Attorney General of the State of North Carolina; JAMES A. GRAHAM, Commissioner of Agriculture of the State of North Carolina, who are sued in their official capacity only

Appellants

vs.

THE WASHINGTON STATE APPLE ADVERTISING COMMISSION, A Washington State Agency

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

JURISDICTIONAL STATEMENT

RUFUS L. EDMISTEN
Attorney General of the State of North Carolina
N. C. Department of Justice
P. O. Box 629
Raleigh, North Carolina 27602

Of Counsel:

JOHN R. JORDAN, JR.
P. O. Box 709
Raleigh, North Carolina 27602

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Pursuant to Rules 13(2) and 15 of the Rules of the Supreme Court of the United States, James E. Holshouser, Governor of the State of North Carolina; Rufus L. Edminsten, Attorney General of the State of North Carolina; James A. Graham, Commissioner of Agriculture of the State of North Carolina, appellants, file this statement of the basis on which it is contended that the Supreme Court of the United States has jurisdiction on direct appeal to review the final judgment in question, and that the Court should exercise such jurisdiction in this case.

OPINION BELOW

The opinion of the three-judge district court appears in 408 F. Supp. 857 (E.D.N.C. 1976) and is included herein as Appendix A, (pp 8-18).

JURISDICTION

The appeal herein is from a final judgment made and entered in the United States District Court for the Eastern District of North Carolina by a specially constituted three-judge panel convened under 28 U.S.C. §§2281 and 2284. The judgment enjoins the enforcement of a state statute. The Supreme Court of the United States has jurisdiction to review the final judgment by direct appeal pursuant to 28 USC §1253.

The final judgment was entered April 22, 1976. Notice of Appeal was filed on May 20, 1976, in the United States District Court for the Eastern District of North Carolina.

STATUTE INVOLVED

The General Statutes of North Carolina §106-189.1, as amended by Chapter 506 of the Session Laws of 1973, provide:

> (a) All apples sold, offered for sale, or shipped into this state in closed containers shall bear on the con-

tainer, bag or other receptable no grade other than the applicable U.S. grade or standard or the marking "unclassified", "not graded" or grade not determined."

(b) Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not more than Fifty Dollars ($50.00). Each day on which the apples are sold or offered for sale in violation of the provisions of this section shall constitute a separate violation.

QUESTIONS PRESENTED

1. Did the court below err in refusing to dismiss the action because the Washington State Apple Advertising Commission lacked standing to bring the action?

2. Did the court below err in refusing to dismiss the action because the jurisdictional amount requirement of 28 U.S.C. §1331 was not met?

3. Did the court below err in declaring N. C. Gen. Stat. §106-189.1 unconstitutional as imposing an impermissible burden on interstate commerce and in enjoining the enforcement of the statute insofar as it precluded the display of the Washington State grade on closed containers of apples shipped into the State of North Carolina?

STATEMENT OF THE CASE

The facts of the case underlying this appeal are as follows:

N.C. Gen. Stat. §106-189.1 was duly enacted into law by the General Assembly of North Carolina. The statute is a part of the North Carolina Marketing and Branding Farm Products Law, and it requires that "no grade other than the applicable U.S. grade" be shown on closed containers of apples sold, offered for sale, or shipped into North Carolina.

The Washington State Apple Advertising Commission filed suit requesting a declaratory judgment that the statute

was unconstitutional and requesting that enforcement of the statute be permanently enjoined.

The District Court overruled appellant's motion to dismiss on the ground that the jurisdictional amount requirement of 28 U.S.C. §1331 was not met and that the Washington State Advertising Commission lacked standing to challenge the statute. After a hearing on the merits, the District Court held that the statute contravened the Commerce Clause of the United States Constitution, and it enjoined enforcement of the statute insofar as it precluded the display of the Washington State grade on closed containers of apples shipped into North Carolina.

SUBSTANTIALITY OF FEDERAL QUESTIONS

This appeal presents important and substantial questions in that:

A. The Washington State Apple Advertising Agency (hereinafter "Commission") was allowed to maintain the suit despite the fact that the Commission had no "personal stake" in the outcome of the litigation. The Commission is a Washington State agency charged with promoting and expanding the market for Washington-grown apples. It is not an association of apple growers or shippers. Since it neither grows nor sells apples, nor represents those who do, it lacked standing to maintain the suit.

B. The Commission was allowed to maintain the suit despite its failure to meet the jurisdictional amount requirement of 28 U.S.C. §1331. For the court to have jurisdiction under 28 U.S.C. §1331, the amount in controversy must exceed the sum of $10,000.00. Perusal of the Commission's pleadings indicates that it could not possibly establish that it has lost one single dollar because of the challenged statute, or that it was threatened with loss. The Commission's allegations were that individuals other than the Commission have suffered loss, or would suffer loss in the future. Its own

pleadings revealed that the court could not properly exercise jurisdiction over the controversy.

C. The District Court decision contravenes Supreme Court decisions upholding the right of each state to exercise broad powers in the area of regulating the inspection, branding, and packaging of farm products grown, produced, or marketed within the state. When the health, safety, and welfare of local residents are being protected through a reasonable exercise of a state's police power, there is a strong presumption that the challenged statute is constitutional. Thus, despite the fact that interstate commerce was affected or burdened to some extent, the Supreme Court has upheld state regulations pertaining to food where the chief purpose or effect was to protect local purchasers of food from fraud or deception, or from misbranding, or from unwholesome, impure, or injurious food. The District Court, in striking down N.C. Gen. Stat. §106-189.1, failed to consider, or failed to follow, the case law in this area.

D. The District Court decision ignored United States Department of Agriculture recommendations that uniformity in grading nomenclature be promoted in the grading of food items. One recommendation of a United States Department of Agriculture team study conducted in 1972 was that state apple grades be eliminated to "lessen confusion in trading." The study noted that, at that time, 13 states had their own apple grades and standards, but that only Washington was using its grades extensively. It noted that variations in certain requirements lead to confusion in trading, and it said *"Elimination of State grades and adoption of U. S. grades would lessen confusion at the wholesale and retail levels."* (Emphasis added.) This was not a study done by a state agency to support protective legislation; it was a study done nationally by a group of impartial experts. Its recommendations indicate that, in the area of apple grading standards, it is the State of Washington that is out of step with the rest of the nation, not the contrary.

The move toward uniformity in grading standards is a necessity when viewed in the larger context. The United States Department of Agriculture has proposed establishing a uniform grading nomenclature for U. S. grades for fresh fruits, vegetables, nuts and other special products. In its proposal the Department notes that "there are 152 grade standards covering 82 fresh fruits and vegetables" and that there are "at least four different terms to describe the top grade" for those 82 fresh fruits, vegetables, nuts and other special products. After adding to this multitude of U. S. grades the various and sundry state grading variations, it is readily apparent that the opportunity for confusion, even among wholesalers and traders, is clear and abundant. To attempt to reduce the opportunities for confusion by the evenhanded regulation of grading standards would appear to be a legitimate exercise of a state's police power.

E. The District Court's decision disrupted North Carolina's efforts to exercise reasonable control over the branding of apples shipped into or sold within the state in closed containers. North Carolina legislated in an evenhanded manner in regulating the branding of apples. The statute imposed the same uniform requirement on all apples, including all North Carolina grown apples offered for sale in closed containers. A large number of states ship apples in interstate commerce, and of those states, a considerable number have their own state grading standards. Among the states having grading standards, there is no uniformity in grading standards but they use the same indicative terms (*E.g.*, Extra Fancy, Fancy, etc.). Washington State is only one of many states which ship apples into North Carolina. The Washington apple grading standards can be changed without legislative action and could be manipulated according to market conditions. Invalidation of N. C. Gen. Stat §106-189.1 has

opened the way to *all* apple marketing states to ship their apples into North Carolina using misleading, deceptive, and inferior state grades.

CONCLUSION

For the reasons stated above, appellants submit that this appeal brings before the Court substantial and important federal questions which require plenary consideration, with briefs on the merits and oral argument, for their resolution.

RUFUS L. EDMISTEN
Attorney General of the
State of North Carolina

MILLARD R. RICH, JR.
Deputy Attorney General
N. C. Department of Justice
P. O. Box 629
Raleigh, North Carolina 27602

JOHN R. JORDAN, JR.
1414 Branch Banking and
Trust Building
P. O. Box 709
Raleigh, North Carolina 27602

APPENDIX A

IN THE UNITED STATES DISTRIT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

RALEIGH DIVISION

THREE-JUDGE COURT

No. 75-0300-CIV-5

THE WASHINGTON STATE APPLE ADVERTISING COMMISSION
A Washington State Agency,

Plaintiff,

versus

JAMES E. HOLSHOUSER, Governor of the State of North Carolina; RUFUS L. EDMISTEN, Attorney General of the State of North Carolina; JAMES A. GRAHAM, Commissioner of Agriculture of the State of North Carolina, who are sued in their official capacity only,

Defendants.

MEMORANDUM DECISION

(Heard February 6, 1976 Decided March 1, 1976)

Before CRAVEN, Circuit Judge, LARKINS, Chief District Judge and DUPREE, District Judge.

Slade Gorton, Attorney General for State of Washington, Olympia, Washington, James Arneil, Special Assistant Attorney General for State of Washington (Davis, Arneil, Dorsey & Kight, Wenatchee, Washington), Robert C. Howison, Jr., Special Assistant Attorney General for State of Washington (Joyner & Howison, Raleigh, North Carolina) for Plaintiff; Rufus L. Edmisten, Attorney General of North Carolina, Millard R. Rich, Jr., Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, and Joseph E. Wall and John R. Jordan, Jr. (Jordan, Morris & Hoke, Raleigh, North Carolina) for Defendants.

CRAVEN, Circuit Judge:

The Washington State Apple Advertising Commission challenges the constitutionality of N.C. Gen. Stat. § 106-189.1, which requires that "no grade other than the applicable U.S. grade" be shown on closed containers in which apples are "sold, offered for sale or shipped into" North Carolina.[1] The Commission argues that this statute violates the commerce clause, the equal protection and due process guarantees, and the first amendment to the United States Constitution. In oral argument plaintiff pressed but two of these claims—that the statute constitutes an unreasonable burden and restriction upon interstate commerce in violation of art. 1, § 8 of the Constitution, and that, by prohibiting the display of the Washington state grade, the statute violates the constitutional right of freedom of speech. We agree that the statute violates the commerce clause, and, accordingly, declare it unconstitutional and enjoin its enforcement as applied to state grade markings on closed containers. Our determination of that issue makes it unnecessary to examine the Commission's other objections to the law.[2]

---

[1] The General Statutes of North Carolina § 106-189.1, as amended by Chapter 506 of the Session Laws of 1973, provide:

> (a) All apples sold, offered for sale, or shipped into this state in closed containers shall bear on the container, bag or other receptacle, no grade other than the applicable U.S. grade or standard or the marking "unclassified", "not graded" or "grade not determined."
>
> (b) Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not more than Fifty Dollars ($50.00). Each day on which the apples are sold or offered for sale in violation of the provisions of this section shall constitute a separate violation.

[2] As to whether the communication of information implicit in the Washington state grades is afforded some protection by the first amendment even though "commercial speech," *see:* Bigelow v. Virginia, 421 U.S. 809, 818-26 (1975); Terminal-Hudson Electronics, Inc. v. Department of Consumer Affairs, 44 U.S.L.W. 2337 (C.D. Cal. Jan. 6, 1976) (three-judge court); Anderson Clayton & Co. v. Washington State Dept. of Agriculture, 402 F. Supp. 1253 (W.D. Wash. 1975) (three-judge court).

I.

This action for declaratory and injunctive relief was brought by the Washington State Advertising Commission, an agency and corporate body created by legislative act of the State of Washington. On motion to dismiss, Judge Dupree, sitting alone,[3] held that the Commission had standing to "assert all the claims presented in the complaint, both those interests clearly belonging to the Association itself and those belonging to the various individual growers and producers of the State of Washington [and] . . . that there exists the necessary amount in controversy." We agree, and proceed to the merits.[4]

II.

We find the essential facts to be as follows:

1. N.C. Gen. Stat. § 106-189.1 (1973) requires that all apples "sold, offered for sale, or shipped into [North Carolina] in closed containers" shall bear "no grade other than the applicable U.S. grade or standard or the marking 'unclassified,' 'not graded' or 'grade not determined.'" Violations of the statute are punishable by a criminal penalty in the amount of up to $50.

2. No such statute applies to any other type of produce or to apples shipped in open containers.

3. North Carolina is the only state in the nation which prohibits the display of Washington state grades on closed shipping containers.

4. In 1974, the last year for which figures are available, Washington apple growers shipped apples worth in excess

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[3] It is clear that a single district judge has jurisdiction to hear a motion to dismiss based on these grounds. Gonzalez v. Employees Credit Union, 419 U.S. 90, 100 (1974); Jacobs v. Tawes, 250 F.2d 611 (4th Cir. 1957).

[4] Since there is jurisdiction under 28 U.S.C. § 1331, we need not consider whether there is also jurisdiction under 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3).

of $2,000,000 directly into North Carolina. Additionally, apples worth approximately 30 to 40 percent of that amount were trans-shipped into North Carolina after direct shipment to other states.

5. The Commission spent in excess of $25,000 in advertising for the 1974 crop year. North Carolina has no statute or regulation which prohibits such advertising other than that involved in the grading statute under challenge in this case.

6. The State of Washington requires that all apples shipped in closed containers which are packed in the State must be graded according to either Washington State apple grade or the U.S. grade.

7. Presently 13 states have state grades. Of these, seven states, including Washington, currently ship apples into North Carolina.

8. At the time N.C. Gen. Stat. § 106-189.1 was enacted, North Carolina had no state apple grade.

9. As of September 1, 1974, the Washington State apple grades were made equivalent or superior to U.S. grades in all corresponding categories. These grades are established by Washington Department of Agriculture regulations.

10. As a direct result of the enactment of N.C. Gen. Stat. § 106-189.1, some apple growers in the State of Washington have taken the following actions:

a. Washington state grades have been manually obliterated from closed shipping boxes to be shipped to North Carolina at a cost of five to 15 cents per box;
b. Preprinting of shipping boxes with state grades have been abandoned and the applicable U.S. grade stamped manually or mechanically on boxes;
c. Accounts in North Carolina have been cancelled, and sales to the state curtailed. (Some individuals have abandoned marketing in the state entirely.)

These results of the legislation constitute a burden on interstate commerce.

11. The existence of multiple, inconsistent state grades pose a danger of confusion in the apple marketing industry. There is, however, no showing that Washington state grades have caused any confusion.

12. The stated purpose of the North Carolina apple grading statute is to "standardize grading labels, reduce confusion, and prevent deception" in the marketing of apples in the state. Brief for Defendant at 13.

13. The purchase of apples in closed shipping containers is normally and generally done only by wholesale produce brokers and distributors or by the produce buyers for food stores and supermarkets. Apples are not generally sold at retail to the public in their shipping containers.

III.

The State of North Carolina argues that the statute is a valid exercise of police power and, as such, is not unconstitutional under the commerce clause. It contends that the purpose of the legislation is to eliminate "confusion and deception in the marketing of foodstuffs" which results from the proliferation of multiple inconsistent and non-uniform state grades. This interest, North Carolina argues, is a valid local concern under the state's police powers, "akin to . . . regulations protecting the health and welfare of the State's citizens." Brief for Defendant at 5. *See Florida Lime and Avacado Growers, Inc. v. Paul,* 373 U.S. 132, 146 (1963). Furthermore, the state notes the statute is nondiscriminatory on its face; it applies to all apples moving in commerce in the state regardless of their point of origin inside or outside the state.

Given these basic propositions, North Carolina argues that no balancing of local benefit against the burden on interstate commerce is required:

> If the legislation is a reasonable means of achieving a non-discriminatory, legitimate goal it is constitutional.

> When protection of the health, safety and welfare of the citizenry is the purpose for enacting such legislation, "public policy" questions of whether the benefits outweigh the costs of compliance are questions properly determined by the state legislature.

Brief for Defendant at 8-9.

We believe that the labels the state attempts to pin on this statute are not conclusive as to its constitutionality. North Carolina's first major point in support of the statute's validity is that it is nondiscriminatory, applying alike to apples moving in commerce in the state whether produced inside or outside the state. That this is facially correct does not afford a basis for decision.

In *Best & Co. v. Maxwell*, 311 U.S. 454 (1940), the Supreme Court struck down as discriminating against interstate commerce a North Carolina tax of $250 "on every person or corporation, not a regular retail merchant in the state, who displays samples in any hotel room rented or occupied temporarily for the purpose of securing retail orders." In reaching this result, the Court stated:

> *The commerce clause forbids discrimination, whether forthright or ingenious.* In each case it is our duty to determine whether the statute under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce.
>
> This standard we think condemns the tax at bar. *Nominally the statute taxes all who are not regular retail merchants in North Carolina, regardless of whether they are residents or nonresidents. We must assume, however, on this record that those North Carolina residents competing with appellant for the sale of similar merchandise will normally be regular retail merchants.* The retail stores of the state are the natural outlets for merchandise, not those who sell only by sample. . . . The only corresponding fixed-sum license tax to which appellant's real competitors are subject is a tax of $1 per annum for the privilege of doing business.

> Non-residents wishing to display their wares must either establish themselves as regular North Carolina retail merchants at prohibitive expense, or else pay this $250 tax that bears no relation to actual or probable sales but must be paid in advance no matter how small the sales turn out to be.

Id. at 455-56 (emphasis added and footnotes omitted).

Similarly, in *Minnesota v. Barber*, 136 U.S. 313 (1890), the Court struck down a facially neutral statute which required that animals must be inspected in the state before slaughter if fresh meat from them was to be sold there. The Court dealt with the discriminatory impact of the statute as follows:

> It is, however, contended in behalf of the State, that there is in fact no interference, by this Statute, with the bringing of cattle, sheep and swine into Minnesota from other States, nor any discrimination against the products or business of other States, for the reason—such is the argument—that the Statute requiring an inspection of animals on the hoof, as a condition of the privilege of selling, or offering for sale, in the State, the meats taken from them, is applicable alike to all owners of such animals, whether citizens of Minnesota or citizens of other States. *To this we answer that a statute may, upon its face, apply equally to the people of all the States, and yet be a regulation of interstate commerce which a State may not establish. A burden imposed by a State upon interstate commerce is not to be sustained simply because the statute imposing it applies alike to the people of all the States, including the people of the State enacting such statute.*

Id. at 326 (emphasis added).

Despite facial neutrality, it is clear that the statute discriminates against interstate apple sales and in favor of those intrastate in nature. At the time the statute was enacted, North Carolina had and up to the present has no established grading system. Washington did. The statute, as a result, has had no effect on the existing practices of North Carolina

apple producers; they may market their apples with no grade whatsoever, or they may affix the United States grade. But Washington apple producers, wishing to sell in North Carolina, have been forced to change their practices with a resulting burden on interstate commerce.[5]

While we do not know and cannot here determine whether the "true" legislative purpose of this statute was to discriminate, we conclude that its effect is discriminatory. "[O]ne state in its dealings with another may not place itself in a position of economic isolation." *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 527 (1935). The North Carolina statute in this case represents a substantial step in that forbidden direction.

North Carolina also argues that since this legislation represents an exercise of the state's police power over a matter of legitimate local concern, confusing and deceptive marketing practices, it is constitutional irrespective of this court's view of the determinations of "public policy" on which it was based.[6] The Supreme Court has clearly stated that safety measures, to which this statute bears resemblance, "carry a strong presumption of validity when challenged in court." *Bibb v. Navajo Freight Lines*, 359 U.S. 520, 524

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[5] *See* Findings of Fact 10, *supra*.

[6] In some formulations of its arguments the state seems to carve out regulation of foodstuffs and the elimination of confusion and deception in the marketing of foodstuffs as a class of health, safety and welfare regulations where the state's interests are dominant no matter what the burden on interstate commerce: "Defendants contend that a balancing of local benefit against the burden on interstate commerce is not a required part of the Supreme Court's test where the legislation in question regulates the readying of foodstuffs for market." Brief for defendant at 6. North Carolina cites no case which so holds, and we are convinced that is not the law.

We believe the test in all areas is that articulated in Pike v. Bruce Church, 397 U.S. 137, 142 (1970), which is in essence a balancing test. It is true that the traditionally strong interest of states in the regulation of foodstuffs as a health measure often outweigh the burden on interstate commerce. But where the state regulation prevails it is because of the strength of its interest, and not the distinctive nature of the judicial test applied to this discrete area of interest.

(1959). Furthermore, "[i]f there are alternative ways of solving a problem, [the Court does] not sit to determine which of them is best suited to achieve a valid state objective. Policy decisions are for the state legislature, absent federal entry into the field." *Id.* (footnote omitted). But it is clear that the Court did not mean that because a state acts under its police power with respect to health and safety the legislation is withdrawn from scrutiny under the commerce clause.

In *Dean Milk Co. v. Madison*, 340 U.S. 349 (1951), the Court rejected the same argument. "[T]hat the ordinance is valid simply because it professes to be a health measure . . . would mean that the Commerce Clause of itself imposes no limitations on state action other than those laid down by the Due Process Clause, save for the rare instance where a state artlessly discloses an avowed purpose to discriminate against interstate goods." *Id.* at 354.

But even a statute with some discriminatory impact may be sustained if the local interests are sufficiently strong[7] and the statute carefully tailored to their protection.[8] Here, however, the statute's purported purpose of eliminating deception and confusion in the marketing of apples is irrationally implemented. Apples may *not* be marketed in the state in closed containers bearing (1) a state grade only, (2) the U.S. grade *and* a state grade, but they may be marketed (3) *with no grade at all*. Certainly this regulation does not eliminate the multiplicity of differing state grades, but it does so in favor of *no information at all*. Moreover, the statute concerns itself only with the marketing of apples in closed containers, which rarely, if ever, reach the consuming public. It is typically the wholesaler who sees these grade markings, and we do not believe that, as to him, the goal of eliminating confusion and deception would be better served by no grade than by the state grades.

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[7] *Cf.* Union Brokerage Co. v. Jensen, 322 U.S. 202, 211 (1944).

[8] *See Dean Milk, supra* at 354.

IV.

For the foregoing reasons, we conclude that N.C. Gen. Stat. § 106-189.1 has the effect of discriminating against interstate commerce by burdening the sale of Washington apples for the benefit of local producers.[9]

Accordingly, we declare N.C. Gen. Stat. § 106-189.1 unconstitutional insofar as it prohibits the display of the Washington State apple grade on closed containers shipped directly or indirectly into this state, and we will enter a judgment to enjoin its enforcement.

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[9] Even had we found the statute to have been neutral in its impact, we believe it would be unconstitutional as violative of the commerce clause. Pike v. Bruce Church, 397 U.S. 137, 142 (1970), stated the basic test of constitutional validity interstate commerce as follows:

> Although the criteria for determining the validity of state statutes affecting interstate commerce have been variously stated, the general rule that emerges can be phrased as follows: Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. . . . If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

(Citation omitted).

North Carolina contends that it should prevail under this test since the interference with commerce is minimal. We disagree. An extra cost of 5-15 cents per box is enough to cause some wholesalers to abandon the market. "[T]he burden imposed on . . . commerce is clearly excessive in relation to the putative local benefits." Thus, even absent discriminatory effect, the statute would still be invalid.

APPENDIX B

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

THREE-JUDGE COURT

(Judgment entered April 22, 1976)

THE WASHINGTON STATE APPLE ADVERTISING COMMISSION, a Washington State Agency, Plaintiff,	CIVIL ACTION FILE NO. 75-0300-Civ-5
vs.	
JAMES E. HOLSHOUSER, JR., Governor of the State of North Carolina; RUFUS L. EDMISTEN, Attorney General of the State of North Carolina; JAMES A. GRAHAM, Commissioner of Agriculture of the State of North Carolina, who are sued in their official capacity only, Defendants.	JUDGEMENT DECLARING N. C. GEN. STAT. §106-189.1 UNCONSTITUTIONAL AND ENJOINING THE ENFORCEMENT THEREOF AGAINST DISPLAY OF WASHINGTON STATE APPLE GRADES ON CLOSED CONTAINERS

THIS CAUSE coming on to be heard and being heard on the merits before the undersigned J. Braxton Craven, Circuit Judge, John D. Larkins, Jr., Chief District Judge, and Franklin T. Dupree, Jr., District Judge, on February 6, 1976, it having been ordered on October 14, 1975, by Judge Dupree that the action required the convening of a three-judge court pursuant to 28 U.S.C. §2281, upon Plaintiff's Complaint asking the Court to declare N. C. Gen. Stat. §106-189.1 (1973) in violation of the United States Constitution insofar as said statute prohibits the display of the Washington State apple grade on closed containers shipped directly or indirectly into North Carolina and seeking to enjoin the enforcement of said statute as it applies to the aforementioned activities; and

The plaintiff being represented by Slade Gorton, Attorney General for the State of Washington, Olympia, Washington, Edward B. Mackie, Deputy Attorney General for the State

of Washington, Olympia, Washington, James Arneil, Special Assistant Attorney General for the State of Washington (Davis, Arneil, Dorsey, Kight & Parlette, Wenatchee, Washington), Robert C. Howison, Jr., Special Assistant Attorney General for the State of Washington and Edward S. Finley, Jr. (Joyner & Howison, Raleigh, North Carolina), and defendants being represented by Rufus L. Edmisten, Attorney General of North Carolina, Millard R. Rich, Jr., Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, and Joseph E. Wall and John R. Jordan, Jr. (Jordan, Morris & Hoke, Raleigh, North Carolina); and

The Court having considered the affidavits filed herein and arguments of counsel and being fully advised in the premises, and having heretofore filed its Memorandum Decision March 1, 1976, the findings and holdings of which are incorporated herein; and

It appearing to the Court that Plaintiff has standing to assert all the claims presented in the Complaint, both those interests clearly belonging to the Plaintiff itself and those belonging to the various individual growers and producers of the State of Washington and that there exists the necessary amount in controversy; and

It appearing to the Court that N. C. Gen. Stat. §106-189.1 has the effect of discriminating against interstate commerce by burdening the sale of Washington apples for the benefit of local producers and therefore constitutes an unreasonable burden and restriction upon interstate commerce in violation of Art. 1, §8 of the United States Constitution;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that N. C. Gen. Stat. §106-189.1 is in violation of Art. 1, §8 of the United States Constitution insofar as it prohibits the display of the Washington State apple grade on closed containers shipped directly or indirectly into North Carolina; and

IT IS FURTHER ORDERED, ADJUDGED AND

DECREED that the Defendants, and each of them, are hereby permanently enjoined from enforcing N. C. Gen. Stat. §106-189.1, or any regulations thereunder, insofar as said statute, or regulations thereunder prohibit the display of the Washington State apple grade on closed containers shipped directly or indirectly into North Carolina, and that Plaintiff shall recover its costs.

DONE IN OPEN COURT this 19 day of April, 1976.

J. Braxton Craven
United States Court of Appeals Judge
Fourth Judicial Circuit

John D. Larkins, Jr.
Chief United States District Judge

F. T. Dupree, Jr.
United States District Judge

Presented by:

Slade Gorton
James Arneil
R. C. Howison, Jr.
of Attorneys for Plaintiff

Approved as to form:

Millard R. Rich, Jr.
John R. Jordan, Jr.
Joseph E. Wall
of Attorneys for Defendants

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

RALEIGH DIVISION

THE WASHINGTON STATE APPLE ADVERTISING COMMISSION, A Washington State Agency

Plaintiff

vs.

JAMES E. HOLSHOUSER, Governor of the State of North Carolina; RUFUS L. EDMISTEN, Attorney General of the State of North Carolina; JAMES A. GRAHAM, Commissioner of Agriculture of the State of North Carolina who are sued in their official capacity only,

Defendants

CIVIL ACTION FILE
No. 75-0300-CIV-5

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

(Filed May 20, 1976)

NOTICE is hereby given that James E. Holshouser, Jr., Governor of the State of North Carolina; Rufus L. Edmisten, Attorney General of the State of North Carolina; and James A. Graham, Commissioner of Agriculture of the State of North Carolina, the defendants above-named, hereby appeal to the Supreme Court of the United States from the final judgment declaring N. C. G. S. §106-189.1 unconstitutional and enjoining enforcement thereof entered in this action on 22 April 1976.

This appeal is taken pursuant to Title 28, United States Code, Section 1253.

Date: 20 May, 1976.

RUFUS L. EDMISTEN
Attorney General of the State of North Carolina
MILLARD R. RICH, JR.
Deputy Attorney General
N. C. Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
Telephone: (919) 28-3377

JORDAN, MORRIS AND HOKE
By: John R. Jordan, Jr.
By: Joseph E. Wall
Attorneys for Defendants
1414 Branch Banking and
Trust Building
Post Office Box 709
Raleigh, North Carolina 27602
Telephone: (919) 828-2501

NORTH CAROLINA

WAKE COUNTY

AFFIDAVIT

I, Joseph E. Wall, depose and say that I am an attorney in the office of John R. Jordan, Jr., attorney of record for James E. Holshouser, Rufus Edmisten and Jim Graham, the appellants herein, and that, pursuant to Rule 33, Rules of the Supreme Court I served three copies of the attached Notice of Appeal on the party required to be served herein, as follows:

On The Washington State Advertising Commission, the appellee herein, by delivering the same to Edward S. Finley, Jr., attorney in the office of Robert C. Howison, Jr., counsel of record for The Washington State Advertising Commission, located in the Wachovia Bank Building, Raleigh, North Carolina on May 20, 1976.

All parties required to be served have been served.

JOSEPH E. WALL

Subscribed and sworn to before me on 20 May, 1976.

MAUREEN H. O'DANIEL
Notary Public

My commission expires:

Aug. 22, 1975